

Attorney Docket No. 2004_1610A
Serial No. 10/512,416
October 11, 2006

REMARKS

Favorable reconsideration is respectfully requested in view of the foregoing amendments and the following remarks.

I. CLAIM STATUS AND AMENDMENTS

Claims 1-4 were pending in this application when last examined.

Claims 1-2 were examined on the merits and stand rejected.

Claims 3-4 were withdrawn as non-elected subject matter.

Claim 1 has been amended to incorporate the definition for the x and y variable from claim 2. Support can be found in original claims 2 and 4, and in the disclosure, for example, at page 12, lines 10-14 (Table 1).

Claim 1 has also been amended into "comprising" format. Other minor editorial changes were made to claim 1 to better conform with US practice and to use correct grammar. Support for these changes can be found in the claim as filed.

No new matter has been added.

Claim 2 has been cancelled without prejudice or disclaimer thereto. Applicants reserve the right to file a continuation or divisional application on any canceled subject matter.

Claims 1 and 3-4 are pending upon entry of this amendment.

II. INDEFINITENESS REJECTION

In item 1 on page 2 of the Action, claims 1-2 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to define the x and y variables in the chemical formula $\text{Ba}_{(1-x-y)}\text{Sr}_y\text{MgAl}_{10}\text{O}_{17}:\text{Eu}_x$ in the claims.

The present amendment overcomes this rejection by defining the x and y variables by incorporating the subject matter of claim 2. Thus, the rejection is untenable and should be withdrawn.

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III. ANTICIPATION REJECTIONS

In item 2 on page 2 of the Action, claims 1-2 were rejected under 35 U.S.C. § 102 (e) as being anticipated by Zukawa et al. (U.S. Patent Application Publication No. 2005/0277570).

In item 3 on page 2, claims 1-2 were rejected under 35 U.S.C. § 102(a) & (e) as being anticipated by Sugimoto et al. (U.S. Patent Application Publication No. 2004/0051440).

For the sole purpose of expediting prosecution and not to acquiesce to the above rejections, enclosed is verified English translation of JP2003-042865, which is the foreign priority document of the instant application, thereby perfecting Applicants' foreign priority claim.

JP2003-042865 has a filing date of February 20, 2003. The Office has acknowledged the foreign priority claim, as well as receipt of the certified priority document in this application. See item 12(a)1 on page 1 of the Action.

It is respectfully submitted that the verified English translation of the priority document overcomes the above-noted rejections by removing Zukawa and Sugimoto as prior art references.

In particular, the 102(e) date for Zukawa is October 7, 2003, which is after the instant application's foreign priority date of February 20, 2003.

The 102(a) date for Sugimoto is March 18, 2004, which is after the instant application's foreign priority date of February 20, 2003.

Therefore, the verified English translation removes Zukawa is removed as a 102(e) reference and it removes Sugimoto as a 102(a) reference.

Furthermore, the filing of the verified English translation overcomes the 102(a) & (e) rejection over Sugimoto, because the Office made an error in using Sugimoto as a 102(e) reference. Sugimoto is not available as a 102(e) reference, because it has no 102(e) date.

In accordance with the amendments to 35 U.S.C. § 102(e) in the American Inventors Protection Act (AIPA) of 1999 and the Intellectual Property and High Technology Technical Amendments Act of 2002, if a U.S. application publication is based on an international

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application (IA) that was filed on or after November 29, 2000 and not published in English, the U.S. application publication cannot have a 102(e) date.

In the instant case, Sugimoto is U.S. Patent Application Publication based on international application PCT/JP02/09263, which was filed on September 11, 2002 and is not published in English. Therefore, Sugimoto has no 102(e) date. Consequently, Sugimoto cannot be used in a 102(e) rejection.

Therefore, the verified English translation removes Zukawa is removed as a 102(e) reference and it removes Sugimoto as a 102(a) reference. Since Zukawa and Sugimoto are no longer available as prior art, the above-noted prior art rejections are no longer tenable and should be withdrawn.

CONCLUSION

In view of the foregoing amendments and remarks, it is respectfully submitted that the present application is in condition for allowance and early notice to that effect is hereby requested.

If the Examiner has any comments or proposals for expediting prosecution, please contact the undersigned attorney at the telephone number below.

Respectfully submitted,

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application (IA) that was filed on or after November 29, 2000 and not published in English, the U.S. application publication cannot have a 102(e) date.

In the instant case, Sugimoto is U.S. Patent Application Publication based on international application PCT/JP02/09263, which was filed on September 11, 2002, and it was not published in English as evidenced by the attached copy of the front page of the publication. Therefore, Sugimoto has no 102(e) date. Consequently, Sugimoto cannot be used in a 102(e) rejection.

Therefore, the verified English translation removes Zukawa is removed as a 102(e) reference and it removes Sugimoto as a 102(a) reference. Since Zukawa and Sugimoto are no longer available as prior art, the above-noted prior art rejections are no longer tenable and should be withdrawn.


CONCLUSION

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ATTACHMENT

1. Verified English translation of JP2003-042865;
2. Front page of publication for international application PCT/JP02/09263.